

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA

SEAN SMITH and CRYSTAL SMITH,)
)
Plaintiffs,)
)
v.) Case No.: CIV-17-1302-D
) (Formerly Payne County District Court
CSAA FIRE AND CASUALTY) Case No. CJ-2017-501)
INSURANCE COMPANY and)
LISA HOLLIDAY,)
)
Defendants.)

**ANSWER OF THE DEFENDANT,
CSAA FIRE AND CASUALTY INSURANCE COMPANY¹**

The Defendant, CSAA Fire and Casualty Insurance Company (“CSAA”), for its Answer to Plaintiff’s Petition, alleges and states:

1. With respect to numerical paragraph 1 in Plaintiffs’ Petition, CSAA admits that Plaintiffs were insured under a CSAA policy, subject to the conditions, terms and exclusions in that policy.

2. CSAA denies the allegation contained in numerical paragraph 2 in Plaintiffs’ Petition.

¹CSAA mailed its Answer to Plaintiffs’ Petition to the Court Clerk of Payne County for filing on December 4, 2017, the same day it removed this case to federal court. As such, CSAA’s Answer was not a part of the state court record at the time of removal and therefore, was not attached to CSAA’s Notice of Removal. Accordingly, CSAA files the present Answer within the time allowed by FED. R. CIV. P. 81.

3. CSAA generally admits the allegations contained in numerical paragraph 3 in Plaintiffs' Petition. However, CSAA denies any earthquake-related damage to Plaintiffs' home.

4. CSAA generally admits the allegation contained in numerical paragraph in Plaintiffs' Petition.

5. CSAA admits it hired Lisa Holliday, an engineer, to inspect and render an opinion on the condition of Plaintiffs' home. The allegations made by Plaintiffs against Lisa Holliday are not only false, they are defamatory. CSAA makes it clear to its independent adjusters and independent professionals that it is not looking for a pre-determined position that an excluded loss was the cause of loss.

6. With respect to numerical paragraph 6 in Plaintiffs' Petition, CSAA denies that Holliday owed a legal duty to Plaintiffs, and CSAA further denies Holliday failed to exercise ordinary care during the course of her inspection of Plaintiffs' home.

7. CSAA denies the allegations contained in numerical paragraph 7 Plaintiffs' Petition.

8. CSAA denies the allegations contained in numerical paragraphs 8 through 11 in Plaintiffs' Petition.

AFFIRMATIVE/OTHER DEFENSES

9. Plaintiffs have failed to state a claim upon which relief can be granted against Lisa Holliday. The joinder of Lisa Holliday as a Defendant to this lawsuit is a fraudulent joinder designed only to destroy diversity and prevent removal to federal court.

10. The Plaintiffs, individually and/or collectively, have failed to state a claim against CSAA upon which relief can be granted.

11. Discovery may reveal that Plaintiffs, individually and/or collectively, lack standing or capacity to bring the present lawsuit.

12. CSAA reserves the right to assert lack of cooperation as a defense.

13. CSAA's investigation, handling and evaluation of Plaintiffs' claims were at all times reasonable, thus barring Plaintiffs' bad faith claim.

14. A legitimate dispute exists as to the cause of loss and/or the value of Plaintiffs' claim, thus barring any claim by Plaintiffs against CSAA for bad faith.

15. CSAA's actions, at all times, have been reasonable and appropriate in response to Plaintiffs' demands.

16. Plaintiffs' bad faith claim against CSAA in the present lawsuit should be bifurcated and/or severed from the remaining claims in this lawsuit.

17. Discovery may reveal that Plaintiffs have failed to mitigate their alleged damages.

18. Because discovery has not yet begun, CSAA respectfully reserves the right to amend its Answer, to assert additional defenses, and/or assert additional claims as discovery progresses.

Respectfully submitted,

s/ Erin J. Rooney

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**ATTORNEYS FOR DEFENDANT,
CSAA FIRE AND CASUALTY INSURANCE
COMPANY**

CERTIFICATE OF SERVICE

I hereby certify that on December 6, 2017, I electronically transmitted the attached document to the Clerk of Court using the ECF System for filing. Based on the records currently on file, the Clerk of Court will transmit a Notice of Electronic Filing to the following ECF registrants:

Steven S. Mansell, Esquire
Mark A. Engel, Esquire
Kenneth G. Cole, Esquire
M. Adam Engel, Esquire
Michael C. Felty, Esquire
Matthew K. Felty, Esquire

s/ Erin J. Rooney

For the Firm